



Document 2012 3884

BK: 2012 PG: 3884 Type 06 001 Pages 7

Recorded: 12/21/2012 at 9:50:06.0 AM

Fee Amount: \$37.00

Revenue Tax:

LISA SMITH RECORDER

Madison County, Iowa

INDX ✓

ANNO

SCAN

CHEK

Prepared by: Michael R. Blaser, 666 Grand Avenue, Suite 2000, Des Moines, IA 50309 (515) 242-2424  
Return to: Michael R. Blaser, 666 Grand Avenue, Suite 2000, Des Moines, IA 50309 (515) 242-2480

**MANURE EASEMENT AGREEMENT**

**THIS MANURE EASEMENT AGREEMENT** (“**Agreement**”), entered into the 21st day of September, 2012, and is effective December 14, 2012, between Jeffrey R. Kiddoo, a single person and a resident of the State of Iowa (“**Grantor**”), and Parks Finishing C4, LLC, an Iowa limited liability company (“**Grantee**”).

**WHEREAS**, **Grantee** or its assigns desire to apply hog manure from **Grantee’s** hog confinement facility (the “**Hog Farm**”) located on certain property of **Grantee**, the legal description of which has been attached as Exhibit “A” (“**Grantee’s Land**”), on certain property of **Grantor**, the legal description of which has been attached hereto as Exhibit “B” (“**Grantor’s Land**”), and **Grantor** desires to grant an easement to **Grantee** for the purpose of applying manure to **Grantor’s Land**, pursuant to the terms and conditions of this **Agreement**.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, **Grantor’s** conveyance of **Grantee’s Land** to **Grantee**, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Recitals**. The foregoing recitals and attached Exhibits “A” and “B” are hereby incorporated by this reference. In addition to other consideration, the parties expressly agree and acknowledge that consideration for this **Agreement** includes the transfer by **Grantor** of **Grantee’s Land** to **Grantee** for nominal consideration for the construction of the **Hog Farm**.

2. **Easement**. **Grantor** hereby grants, bargains and conveys to **Grantee** an easement over, across and on **Grantor’s Land** for the purpose of applying such manure in such amounts and at such times as provided in this **Agreement**, including the right to ingress and egress onto **Grantor’s Land** (the “**Easement**”). The **Easement** shall run with the land and bind all future titleholders to **Grantor’s Land** and shall benefit the **Hog Farm**. **Grantor’s Land** consists of approximately 153.84 tillable acres on which manure can be applied by **Grantee** (or **Grantor** as provided herein). The **Easement** shall be for the purpose of applying manure from the **Hog Farm** to **Grantor’s Land** only.

3. **Term and Termination**. This **Agreement** shall continue in full force and effect for an initial term of twenty (20) years from the date hereof and shall continue thereafter for so long as the **Hog Farm** remains in operation, or until either party gives the other party at least eighteen (18) months prior written notice of termination. This **Agreement** may not be otherwise terminated except by written

agreement, signed by the parties hereto, or their successors, assigns or personal representatives, as applicable.

4. **Manure Application by Grantor; Soil Testing.** During the term of this Agreement, **Grantor** agrees to apply all manure produced by the **Hog Farm** to **Grantor's Land**, or to other land for which an written easement or license in favor of **Grantee** for the application of manure is first obtained by **Grantor** ("**Third Party Land**"), all at no cost or expense to **Grantee**. **Grantor** agrees to either arrange for the application of such manure by third parties or to provide all equipment, management, labor, fuel and supplies to apply such manure. **Grantee**, at its expense, will obtain a sample of manure each application season and supply the results of such tests, including maximum application rates, to **Grantor**. During any application period, **Grantor** will have 24-hour access to the **Hog Farm** during the application process. **Grantor** acknowledges that all manure from the **Hog Farm** must be applied by **Grantor**, whether to **Grantor's Land** or to **Third Party Land**, in accordance with applicable law, rules and regulations, and specifically that such manure application must comply with **Grantee's** manure or other nutrient management plan(s), and that **Grantor** must maintain application records as required by **Grantee** and provide such records to **Grantee** after each application period (collectively, the "**Legal Requirements**"). At no time should **Grantor's** manure application cause the discharge of manure into the waters of the State of Iowa or into tile lines that discharge directly into the waters of the State of Iowa. **Grantor** shall not, nor permit any hired applicator or employee to, surface apply manure other than in the event of an emergency. **Grantor** shall follow, or shall cause its hired applicator or employee to follow, **Grantee's** specific recommendations and requirements regarding the securing and ventilation of buildings during the agitation of pits so as to minimize risks to humans and livestock. **Grantor** and **Grantor's** employees (but only if **Grantor** or **Grantor's** employees will be applying manure) or hired applicators will be trained and certified in the application of swine nutrients as required by Iowa law, and will have all necessary permits for manure application. **Grantor** is responsible for performance of work by its employees, agents or its subcontractors, and **Grantor** agrees to bind any subcontractors to all provisions of this Agreement. **Grantor** agrees to indemnify and hold **Grantee** harmless from any loss, claim, damages, civil penalties, attorneys' fees or costs which arise from the failure of **Grantor** to perform their responsibilities under this Agreement (including without limitation compliance with the **Legal Requirements** for the benefit of **Grantee**) or from the claims of any third parties against **Grantee** as a result of the actions or inactions of **Grantor**, which agreement shall survive the termination or completion of this Agreement.

**Grantor** grants **Grantee** access to **Grantor's Land** at all reasonable times during the term of this Agreement for the purpose of soil testing as may be required by federal or state law or rule. **Grantor** acknowledges that Iowa law requires that each parcel of land to which manure is applied be evaluated under the Iowa phosphorus index prior to manure application. In order to generate a phosphorus index the Iowa DNR requires soil samples at a minimum of 10 acre grids or less. **Grantor** shall supply **Grantee** with current soil samples (less than 4 years old) of at least 10 acres grids or less and then again every 4 years to continue manure application on **Grantor's Land**. If **Grantor** fails to supply the required soil samples, then **Grantor**: (a) shall grant **Grantee** or its representatives access to **Grantor's Land** to obtain such samples; and (b) agrees to pay **Grantee** for all of **Grantee's** costs incurred in obtaining such soil samples and in having such samples analyzed.

5. **Application of Manure.** Subject to paragraph 4, **Grantee** may provide for application of manure to **Grantor's Land**, whether by **Grantee** or by third parties hired by **Grantee**. **Grantor** shall have the exclusive right to any or all manure produced at the **Hog Farm** for application to **Grantor's Land**, as such term may be amended from time to time. All environmental and conservation credits,

including carbon sequestration or similar credits or benefits, which are associated with the application of manure as provided in this **Agreement** shall be the sole property of **Grantee**. If **Grantee** applies manure, **Grantee** shall apply manure on **Grantor's Land** at such time and frequency as **Grantee** may reasonably determine. If manure is to be applied other than between October 15 to December 31 of any year, **Grantee** shall first obtain the written consent of **Grantor** to apply such manure, which consent shall not be unreasonably withheld. **Grantor** further agrees that if during the period of this **Agreement**, it is determined by an independent source (e.g., ISU Extension) that a build-up of nutrients or trace elements has occurred which has become significantly detrimental to crop production, **Grantee** will suspend the spreading of manure until the build-up has been reduced to levels not significantly detrimental to crop production; provided, however, such suspension will not result in a termination of this **Agreement**.

6. **Warranties of Grantor.** **Grantor** warrants that **Grantor** has title to and the unrestricted right to convey the **Easement**. **Grantor** waives all rights of dower, homestead and distributive share in and to **Grantor's Land**. **Grantor** agrees to not apply additional fertilizer to **Grantor's Land** if such application, when combined with the manure applied to **Grantor's Land** under this **Agreement**, would exceed the optimal fertilization for the crops grown on **Grantor's Land** or would cause **Grantee** to not be in compliance with **Grantee's** required nutrient or manure management plan(s).

7. **Binding Effect.** This **Agreement** shall inure to the benefit of and be binding upon the parties hereto, and their respective successors, assigns and personal representatives. Without limiting any assignment rights, **Grantee** may assign its rights under this **Agreement**, in whole or in part, for such periods as **Grantee** may determine, to third parties desiring to apply manure to **Grantor's Land**.

8. **Limitation of Liability.** The parties hereto agree that no agent or employee of one party is an agent or employee of the other, and that any liability arising from the actions or negligence of an agent or employee of a party hereto shall be such party's sole responsibility and expense, with any party so responsible hereby agreeing to indemnify and hold the non-responsible party, and the non-responsible party's agents, employees, successors and assigns, harmless from and against any claim, damage or expense (including reasonable attorneys' fees) arising from or related to any accident, injury or death of any person, or damage or destruction of property, arising from or in connection with the responsible party's use of the **Easement**. Such indemnification shall survive the termination of this **Agreement**.

9. **Waiver.** The failure of any party hereto to insist in any one or more instances upon performance of any term or condition of this **Agreement** shall not be construed as a waiver of future performance of any such term, covenant or condition, but the obligation of such party with respect thereto shall continue in full force and effect.

10. **Governing Law.** This **Agreement** shall be construed and governed in accordance with the laws of the State of Iowa.

11. **Entire Agreement.** This **Agreement** constitutes the entire agreement and understanding between the parties and supersedes all earlier agreements or understandings, written or oral. No amendment to this **Agreement** shall be effective unless it is in writing and signed by both parties and/or their respective heirs, successors, assigns and personal representatives. If any provision of this **Agreement** is held invalid, the remaining provisions of this **Agreement** shall remain in full force and effect as if that invalid provision had not been included in this **Agreement**. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neutered gender according to the context.

12. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original for all purposes and all of which together shall constitute one and the same instrument.

*[Signature Page Follows]*

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.

GRANTOR

GRANTEE

Jeffrey R. Kiddoo  
Jeffrey R. Kiddoo

Parks Finishing C4, LLC  
By: [Signature]  
Lawrence Parks, Manager

STATE OF Illinois  
) SS:  
COUNTY OF Champaign

On this 21<sup>st</sup> day of September, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Lawrence Parks, to me personally known, who being by me duly sworn, did say that he is the sole Manager of Parks Finishing C4, LLC, an Iowa manager-managed, limited liability company, executing the within and foregoing instrument; that the within and foregoing instrument was signed on behalf of the company by authority of its Manager; and that Lawrence Parks, as sole Manager, acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the company, by it and by him voluntarily executed.

Nicole Crites  
NOTARY PUBLIC IN AND FOR THE STATE  
OF Illinois



STATE OF Iowa  
) SS:  
COUNTY OF Madison

On this 20<sup>th</sup> day of Sept., 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeffrey R. Kiddoo, to me personally known, who executed the within and foregoing instrument, by him voluntarily executed.

Georgena Breakenridge  
NOTARY PUBLIC IN AND FOR THE STATE  
OF Iowa

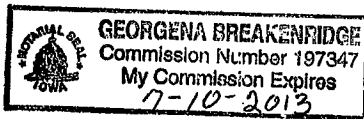


Exhibit "A"  
**Grantee's Land – Legal Description**

A parcel of land located in part of the SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of Section 2, Township 74 North, Range 29 West of the 5<sup>th</sup> Principal Meridian, Madison County, Iowa, said parcel being more fully described as follows:

Commencing at the Southwest corner of said SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ ; thence N89°55'39"E along the South line of said SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  a distance of 449.65 feet; thence N00°00'00"E a distance of 357.53 feet to the Point of Beginning; thence continuing N00°00'00"E a distance of 544.80 feet; thence N90°00'00"W a distance of 239.85 feet; thence S00°00'00"E a distance of 545.11 feet; thence N89°55'36"E a distance of 239.85 feet to the Point of Beginning. Said parcel contains 3.00 acres, more or less, and is subject to easements of record, if any.

Note: The South line of the SE  $\frac{1}{4}$  of said Section 2 is assumed to bear N89°55'39"E for this description.

Exhibit "B"  
**Grantor's Land – Legal Description**

The SW 1/4 of Section 23, Township 74 North, Range 29 West of the 5th P.M., Madison County, Iowa.